

IN THE UNITED STATES DISTRICT COURT FOR  
THE WESTERN DISTRICT OF OKLAHOMA

**FILED**

APR 10 2013

KYLE THOMAS,

Petitioner,

vs.

CHAD MILLER, Warden,

Respondent.

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ROBERT D. DENNIS, CLERK  
U.S. DIST. COURT, WESTERN DIST. OF OKLA.  
BY Yuh DEPUTY

No. CIV-13-23-W

**ORDER**

On March 21, 2013, United States Magistrate Judge Shon T. Erwin issued a Report and Recommendation in this matter and, among other things, recommended that the Petition for Writ of Habeas Corpus ("Petition") filed by petitioner Kyle Thomas pursuant to title 28, section 2241 of the United States Code be dismissed. The parties were advised of their right to object to the Report and Recommendation, but no objections have been filed within the allotted time.

Upon review of the record, the Court concurs with Magistrate Judge Erwin's suggested disposition of this matter and the pending motions filed by Thomas, proceeding pro se, and respondent Chad Miller, Warden.

Accordingly, the Court

- (1) ADOPTS the Report and Recommendation [Doc. 12] filed on March 21, 2013;
- (2) because Thomas has the absolute right, as he has so requested,<sup>1</sup> to dismiss the instant Petition without prejudice because Miller has neither answered nor moved for

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<sup>1</sup>Thomas has requested that his Petition be withdrawn and dismissed without prejudice if he is not permitted to amend his Petition and convert it to one seeking relief under title 42, section 1983 of the United States. See Doc. 11.

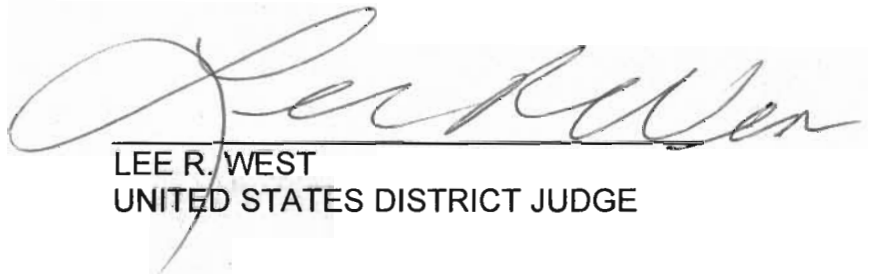
summary judgment, e.g., Rule 41(a)(1), F.R.Civ.P., GRANTS Thomas' Motion to Withdraw Petition Without Prejudice [Doc. 11] file-stamped March 18, 2013;

(3) DENIES Thomas' Motion to Modify Original Writ of Habeas Corpus [Doc. 10] file-stamped March 18, 2013;

(4) deems MOOT Miller's Motion to Dismiss Writ of Habeas Corpus [Doc. 8] filed on February 22, 2013; and

(5) DISMISSES this matter without prejudice.

ENTERED this 10th day of April, 2013.



LEE R. WEST  
UNITED STATES DISTRICT JUDGE